Supreme Court, U.S.
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No. 92-408

In The

Supreme Court of the United States

October Term, 1992

PAULINE MENARD,

Petitioner,

vs.

CITY OF BREAUX BRIDGE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Did the dismissal of Pauline Menard, for the disclosure to private citizens of sensitive information regarding the misconduct of a fellow police officer, violate her First Amendment right to free speech?[1]

II. Did the District Court err in finding that the defendants' actions in dismissing Pauline Menard were not in bad faith?

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1. The first question for review, as articulated by petitioner in her application for certiorari, reads, "Did the firing of Pauline Menard, for reporting child pornography by fellow police officers to the district attorney's office, while on probation for an unrelated matter and without first notifying her superiors, violate her first amendment constitutional right to free speech as further protected under 42 USC 1983?". Respondents contend that this issue has not been accurately framed by petitioner. Specifically, it is respondents' position that, as drafted by petitioner, issue number 1 is an incorrect representation of the factual parameters of this case. The proper issue, in accord with the factual findings of the courts below, is more appropriately set forth above by respondents.

LIST OF ALL PARTIES

1. **Pauline Menard,** petitioner

2. **City of Breaux Bridge,** respondent

3. **Honorable Louis Kern**, Mayor of Breaux Bridge, respondent

4. **George Menard**, Chief of Police for the City of Breaux Bridge, respondent

5. **Wilbert Alexander**, Alderman, City of Breaux Bridge, respondent

6. **Anthony Hebert**, Alderman, City of Breaux Bridge, respondent

7. **Vernon Blanchard,** Alderman, City of Breaux Bridge, respondent

8. **Neil Melancon,** Alderman, City of Breaux Bridge, respondent

9. **James Hebert**, Alderman, City of Breaux Bridge, respondent

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STATEMENT OF THE CASE

A. Statement of Facts

Unless otherwise indicated during the course of this brief, the term "defendants" shall refer exclusively to the respondents: City of Breaux Bridge; Mayor Louis Kern; Chief George Menard; Councilman Wilbert Alexander; Councilman Anthony Hebert; Councilman Vernon Blanchard; Councilman Neil Melancon; and, Councilman James Hebert. The individual defendants (respondents) are members of the Breaux Bridge City Council, the governing authority for the City of Breaux Bridge, Louisiana, except for Chief George Menard who is the duly elected Police Chief for the City. The term "complainant" or "plaintiff" shall refer exclusively to Pauline Menard, the petitioner before this Honorable Court.

The facts surrounding this action, as established at trial, are not significantly disputed. However, the plaintiff's characterization of the factual parameters of this action, as well as inferences drawn therefrom, all as reflected in her writ application, is inaccurate and omits several matters of importance. Hence, the following is presented so that this Honorable Court may have an adequate understanding of the facts which were developed at trial and left undisturbed by the United States Fifth Circuit Court of Appeals.

The Breaux Bridge Police Department is a rural police agency consisting of an elected Chief of Police and fifteen (15) police officials. Tr. 10-12, Vol. 3. George Menard is the elected Chief of Police for the City of Breaux Bridge, having served in that position for approximately twenty-eight (28) consecutive years. Tr. 8-9, Vol. 3. In February, 1989, the plaintiff was a commissioned police officer with the Breaux Bridge Police Department and had been employed in that capacity since 1981. Her duties were primarily

those of a dispatcher. Tr. 10, 76-77, 100, Vol. 3.

On February 14, 1989, at approximately 8:00 o'clock P.M., Howard Devillier, another police officer for Breaux Bridge, Louisiana, found a number of obscene photographs in the desk of a fellow officer, Roger Istre. The photographs were of juveniles and were indicative of possible criminal activity on the part of Istre. Tr. 49-50, Vol. 3; Tr. 80-81, Vol. 3. Officer Devillier took a photograph of the pictures, and then advised plaintiff of what he had discovered, informing her that he was going to investigate the matter to determine if there was any evidence of wrongdoing. Tr. 59, Vol. 3.

Interestingly, the complainant testified at trial that Officer Devillier advised her that he was going to use the photographs for "political purposes". Tr. 81, Vol. 3; Tr. 101, Vol. 3. However, this is disputed by Officer Devillier. Tr. 62, Vol. 3. Notwithstanding the plaintiff's position in this regard, her husband admitted that on the morning after the discovery of the photographs, Officer Devillier informed him that he and Sgt. Ezebe Chevalier, the direct supervisor of both Devillier and the plaintiff, were investigating the matter. Tr. 58, Vol. 3; Tr. 70, Vol. 3; Tr. 34-35, Vol. 4.

In any regard, after learning of the existence of the photographs, the plaintiff told her husband, Eldridge Menard, about them, and he and the complainant then decided to speak with Paulma Johnson for advice although they had previously elected to confer with the District Attorney regarding this matter. Tr. 83, Vol. 3; Tr. 84, Vol. 3; Tr. 18, Vol. 4.[2] At that time, Johnson was a self-employed business man and enjoyed the position of an elected School Board member for St. Martin Parish (county). Tr. 18, Vol. 4. He had no law enforcement experience whatsoever, and was

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2. Paulma Johnson was incorrectly identified in the trial transcript as "Palmer Johnson". Thecourt reporter's error was obviously phonetical.

simply considered by the plaintiff to be a civic leader. Tr. 23, Vol. 4. Johnson recommended that the complainant and her husband discuss this matter with the Federal Bureau of Investigation since it involved possible criminal activity. Tr. 21, Vol. 4.

Thereafter, the plaintiff's husband conferred with Steve Champagne, an investigator for the District Attorney's Office, and advised him of the suspected criminal activity. This exchange occurred when Eldridge Menard stopped Champagne on the highway, allegedly as he (Menard) was proceeding to the District Attorney's Office to report the discovery of the photographs. Tr. 34, Vol. 3; Tr. 85, Vol. 3. Champagne testified that, to his recollection, the plaintiff herself was not present when her husband relayed the information concerning the pictures. Tr. 35, Vol. 3; Tr. 47, Vol. 3.

Although both the complainant and her spouse testified that the former was in fact present when Eldridge Menard conferred with Champagne, she admittedly did not exit her vehicle and personally speak with Champagne; rather, the entire matter was handled by her husband. Tr. 85-86, Vol. 3; Tr. 96, Vol. 3; Tr. 100, Vol. 3; Tr. 29, Vol. 4. Regardless, Champagne verified that the plaintiff did not *personally* consult with him, any member of the District Attorney's Office or any other law enforcement official regarding the possible illegal activity of Roger Istre. Tr. 41, Vol. 3.

Champagne advised that he could not act upon the information relayed to him until he received additional data, particularly with regard to the identities of the juveniles depicted in the photographs which were not in the possession of the complainant or her husband. Tr. 35, Vol. 3; Tr. 41-42, Vol. 3. Even though the plaintiff and her spouse knew this matter was being investigated by police officers (Tr. 35, Vol. 4), they commenced their own private investigation. Tr. 97-100, Vol. 3; Tr. 30, Vol. 4; Tr. 38, Vol. 4. This unauthorized endeavor resulted in the

identification of one of the juveniles who appeared in the photographs, and the complainant's husband then relayed this data to Champagne, again outside the presence of the plaintiff. Tr. 35, Vol. 3.

The identification of the juveniles by the plaintiff and her spouse was a matter "after the fact". Both Officer Devillier and Sgt. Chevalier testified that on the evening the photographs were discovered, Sgt. Chevalier recognized the juveniles and subsequently conferred with councilman Wilbert Alexander. Tr. 54, Vol. 3; Tr. 57, Vol. 3; Tr. 60, Vol. 3; Tr. 65, Vol. 3. They consulted the juveniles and their parents to ascertain precisely what had occurred. Tr. 65-66, Vol. 3; Tr. 49-51, Vol. 4. Both testified that once they were satisfied that Istre was engaged in criminal activities, the appropriate actions would be taken by them inclusive of advising their Chief of the situation. Tr. 54-55, Vol. 3; Tr. 67, Vol. 3.

Upon receipt of the additional information from the complainant's husband, Champagne immediately informed his superior, an Assistant District Attorney. They then met with Sheriff Charles A. Fuselier and his juvenile officers. A formal, immediate and intensive investigation ensued, the result of which was the arrest of Roger Istre on February 17, 1989. Tr. 36, Vol. 3. Prior to the arrest of Istre, Sheriff Fuselier alerted CHIEF GEORGE MENARD of the investigation and the likelihood that one of his police officers would be arrested. Tr. 17, Vol. 3.

Thereafter, upon the arrest of Istre, Chief Menard conferred with Louis Kern, the Mayor of the city of Breaux Bridge, and City Attorney, Michael A. Harris. Tr. 73-74, Vol. 4; Tr. 81-82, Vol. 4. During the days immediately following the arrest of Istre, there were several conferences among the aforesaid city officials (Chief Menard, Mayor Kern and Attorney Harris), personnel from the St. Martin Parish Sheriff's Office (including Sheriff Charles A.

Fuselier), and members of the District Attorney's Office. Tr. 73-74, Vol. 4; Tr. 81-82, Vol. 4. All of the facts surrounding the investigation and activities of Istre, and the discovery of the photographs which led to his arrest, were disclosed and discussed in detail. Tr. 73-74, Vol. 4; Tr. 81-82, Vol. 4; *see* Exhibit P-10, R. 76, Vol. 4.

Assured with the knowledge that Istre would be properly charged and prosecuted, Chief Menard's focus was then directed to those police officers within his department who had learned of the possible criminal activity of Istre, but had failed to report it to him. Therefore, Chief Menard, on February 20, 1989, suspended all police officers who had learned of the heinous misconduct of Roger Istre, but had not properly disclosed it. Chief Menard had concluded that, without justification, those officers had ignored basic police procedures inherent in their respective positions including, but not limited to, the failure to follow an appropriate chain of command. Tr. 21-25, Vol. 3.

After much deliberation, and in accordance with state law, Chief Menard recommended that the governing authority of the city reprimand, by way of suspension without pay, the police officers described in the foregoing paragraphs. As to the plaintiff, Pauline Menard, his recommendation was that she be dismissed since she was currently on probation for previous misconduct which included a contumacious failure to cooperate with her fellow officers. *See* Exhibits D-1 and D-2, R. 23, Vol. 3; R. 24, Vol. 3.[3] By law, only the Breaux Bridge City Council, the governing authority of the City of Breaux Bridge, could actually impose the recommended punitive measures. Tr. 84, Vol. 4; *see* La.R.S. 33:423.

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3. Both exhibits have been reproduced and are contained in the Appendix to this opposition brief. Exhibit D-1 is attached as Appendix A, and Exhibit D-2 is identified as Appendix B.

The recommendation of Chief Menard was reviewed by the City Council during an executive session held at a public meeting on February 28, 1989. Tr. 74, Vol. 4; Tr. 87, Vol. 4. The course of the entire investigation was shared with the Council, as well as the bases for the recommendations of Chief Menard. Tr. 83-84, Vol. 4; Tr. 97, Vol. 4; Tr. 100-101, Vol. 4; Tr. 58, Vol. 4; Tr. 70-71, Vol. 4; Tr. 93-94, Vol. 4; *see* Exhibit P-10, R. 76, Vol. 4.[4] Although the plaintiff, Pauline Menard, was invited to confer with the Council in executive session regarding the Chief's recommendation, she refused to do so. Tr. 85-86, Vol. 4. Finally, the City Council accepted the Chief's recommendation and terminated the complainant's employment. Tr. 62, Vol. 4. However, prior to acting, the Council was assured by its attorney, Michael A. Harris, that there was sufficient documentation in support of the recommendation of Chief Menard, and that their actions were supported by law. Tr. 71, Vol. 4; Tr. 83, Vol. 4.

At this juncture, it is of more than passing import to note that in February, 1989, Eldridge Menard, the plaintiff's spouse, had previously pled guilty to the crime of false swearing under La.R.S. 14:125. Tr. 38-39, Vol. 4. Furthermore, he had felony charges of aggravated battery pending against him. Tr. 37-38, Vol. 3; Tr. 12, Vol. 4.

B. Course of Proceedings and Disposition in Lower Courts

On November 27, 1989, the plaintiff instituted this litigation in the Western District of Louisiana alleging that her termination from the Breaux Bridge Police Department was in violation of federal law, specifically, the First Amendment to the United States Constitution. R. 1, Vol. 1. Jurisdiction of the court of first instance was premised upon 28 U.S.C. §§1331 and 1343 since claims were urged under the First Amendment and 42 U.S.C. §§1983 and 1988.

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4. This exhibit is contained in the Appendix to this brief, marked as Appendix C.

On August 19,1991, and August 20, 1991, the case was tried, without a jury, before the Honorable Richard J. Putnam. After the trial, the court dismissed the complainant's claims on the basis that her dismissal did not violate her First Amendment rights. Formal Findings of Fact and Conclusions of Law, and a judgment in accordance therewith, were signed by the trial court on September 12, 1991. R. 110-114, Vol. 1; *see* pages A11 - A16 of Appendix to petitioner's writ application. Plaintiff appealed the trial court's decision on September 24, 1991. R. 115, Vol. 1. The decision of the trial court was subsequently affirmed by the United States Court of Appeals for the Fifth Circuit on June 25, 1992. *See* page A1 of Appendix to Petition for Writ of Certiorari filed by Pauline Menard.

SUMMARY OF ARGUMENT

The speech activity of a public employee is entitled to constitutional protection under the First Amendment provided a two prong test is satisfied:

1. The speech of the public employee must address a matter of public concern as determined by its content, form and context. *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983); *and*

2. The interests of the employee in commenting upon the matter outweighs the employer's interests in promoting the efficiency of the public services it performs. *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968); *Thompson v. City of Starkville, Mississippi*, 901 F.2d 456 (5th Cir. 1990).

Even if the plaintiff-employee satisfies both prongs of the aforementioned test, he will not prevail in a First Amendment

action until and unless he demonstrates that the "protected speech" was the motivating factor behind his termination. *Mt. Healthy City School Dist. Board of Education v. Doyle*, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977); *Price v. Brittain*, 874 F.2d 252 (5th Cir. 1989).

The threshold inquiry, therefore, is whether the plaintiff's "speech activities" addressed a "matter of public concern". In the case at bar, defendants contend that the complainant disseminated sensitive information of possible police misconduct to private citizens with no connection to law enforcement. There was no justification for her actions in this regard. Hence, under the facts of this case as developed at trial, the form and context of plaintiff's "speech" do not merit the protections of the First Amendment. Therefore, no further inquiry is necessary since complainant cannot prevail on this initial issue.

Nevertheless, assuming that the speech did in fact meet the first criteria in question (matter of public concern), defendants submit that the plaintiff's actions demonstrate a lack of trust and confidence in both her superior and fellow officers. Furthermore, the unauthorized "investigation" of the possible criminal misconduct of Istre by the complainant and her husband, a private citizen with a criminal record, could have impeded the operations of the police department. As such, the police officers associated with the Breaux Bridge Police Department cannot, in view of the plaintiff's misconduct, fully and completely trust that she will be able to handle sensitive information in a professional manner. Likewise, each of them necessarily questions what data can and should be shared with her, irrespective of the fact that her position invites the receipt of confidential communications on a daily basis.

Trust, loyalty, confidence and close working relationships within a police department are essential ingredients for the effective, efficient delivery of police services, as the evidence at

trial demonstrated. Furthermore, the jurisprudence of this country has frequently recognized the need to aggressively protect against the erosion of such mandatory components of a law enforcement agency. *Connick v. Myers, supra*; *Hughes v. Whitmer*, 714 F.2d 1407 (8th Cir. 1983); *Brockell v. Norton*, 732 F.2d 664 (8th Cir. 1984); *Kelley v. Johnson*, 425 U.S. 238, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976).

Therefore, in light of the aforementioned, the plaintiff's interests attendant to her "speech activities" do not supersede those of the Breaux Bridge Police Department with respect to the promotion of the important services it provides. The employer's interests under the facts of this case are greater than any First Amendment rights which may inure in favor of the complainant-employee. Thus, her speech activities are necessarily void of any constitutional protection under the First Amendment.

Next, if the plaintiff should prevail with respect to establishing that her conduct was constitutionally protected (if the complainant satisfies the two prong test set forth herein), then defendants submit that her claims must nevertheless be denied. Particularly, the evidence of record unequivocally proves that her dismissal was the consequence of her *failure* to report the criminal activities of Istre to her superior or proper law enforcement officials, as well as her sharing of confidential data with unauthorized citizens. Contrary to the arguments expressed in her brief submitted to this Court, plaintiff was not dismissed because she, indirectly through her spouse, notified the District Attorney's Office of the possible misconduct of Istre. Further, the defendants based their decision to dismiss the complainant in significant part upon the fact that at the time of her actions, she was on departmental probation because of previous misconduct.

Lastly, and on an alternative basis, no liability should be assigned to the defendants because they enjoy qualified immunity.

From an objective standpoint, their conduct in dismissing Pauline Menard from her employment was, and remains, reasonable and warranted. Additionally, *under the facts* of the case before this Honorable Court, the First Amendment rights of the plaintiff to engage in the allegedly protected "speech activities" were not, and are not, clearly established by law.

As a consequence of all of the above, the decisions of the lower courts are correct and complainant's Petition for Writ of Certiorari should be dismissed.

REASONS FOR DENYING THE WRIT

I.

THE DISMISSAL OF PAULINE MENARD, FOR THE DISCLOSURE TO PRIVATE CITIZENS OF SENSITIVE INFORMATION REGARDING THE MISCONDUCT OF A FELLOW POLICE OFFICER, DID NOT VIOLATE HER FIRST AMENDMENT RIGHT TO FREE SPEECH.[5]

This action is based upon 42 U.S.C. § 1983 which protects all citizens of this country from the deprivation of any "rights, privileges, or immunities secured by the Constitution and laws" of the United States. In particular, the plaintiff alleges that her civil rights have been violated because of a deprivation of her First Amendment rights to freedom of speech. The primary issue, therefore, is whether the firing of Pauline Menard by the defendants constitutes an unacceptable restriction of her First Amendment rights.

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5. As noted in footnote 1, *supra*, respondents have framed this argument differently than that of the petitioner. It is respondents' contention that argument number 1, as articulated by petitioner, is not in accord with the factual parameters of this action.

Public employers may not interfere with an employee's right to free speech under the First Amendment simply because the content of the speech may be objectionable to a superior. *Rankin v. McPherson*, 483 U.S. 378, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987). However, the jurisprudence of this country has recognized that an employer has a competing concern to maintain the workplace free from unnecessary disruption. *Pickering v. Board of Education*, supra; *Connick v. Myers*, supra. Therefore, when the interests of the employer and employee clash, the Court must balance the legitimate concerns of each in determining whether an employee's speech is worthy of First Amendment protection. *Pickering v. Board of Education*, supra.

In *Thompson v. City of Starkville, Mississippi*, supra, the court succinctly, yet accurately, defined the apropos analysis to be applied in determining whether particular speech conduct of a public employee deserves constitutional protection as follows:

> In order to establish a constitutional violation [the plaintiff] must first prove that her speech involved a matter of public concern. . . . Second, she must demonstrate that her interest in "commenting upon matters of public concern" is greater than the defendants' interest in "promoting the efficiency of the public services [they] perform." . . Third, she must show that her speech motivated the defendants' decision to fire her. [Citations omitted.]

Moreover, the content, form and context of a given statement must be closely scrutinized in order to ascertain whether the speech addresses an issue of "public concern". *Connick v. Myers, supra.* The speech must be examined in view of the entire record and not in a vacuum. *Connick v. Myers, supra,* at 147-148. As such, a case

by case analysis is required. *Thompson v. City of Starkville, Mississippi*, supra; *Price v. Brittain, supra.*

Under the jurisprudence, the burden of persuasion in a First Amendment case lies with the employee to demonstrate that the speech under scrutiny addresses a matter of public concern *and that* the employer's interests are subservient to those of the employee with respect to the challenged speech. *Price v. Brittain*, supra; *Thompson v. City of Starkville, Mississippi, supra.* Although the law at first blush seems unclear as to the party who bears the burden of proof to demonstrate that the speech in question was the motivating factor behind the employee's termination, the language of the Court in *Mt. Healthy City School District v. Doyle, supra*, clearly places this burden upon the employee:

> Initially, in this case, the burden was properly placed upon respondent [employee] to show that his conduct was constitutionally protected, and that this conduct was a "substantial factor" — or to put it in other words, that it was a "motivating factor" in the Board's decision not to rehire him

See also, Price v. Brittain, supra, at 257.

In view of the foregoing, these legal principles can be extracted with ease. A two prong test must be satisfied to determine if an employee's speech warrants constitutional protection under the First Amendment:

> A. The employee must demonstrate that the speech was a matter of public concern as determined by an analysis of its content, form and context. *Connick v. Myers, supra*; *Thompson v. City of Starkville, Mississippi, supra*; *and*

B. The employee must establish that her interests in commenting upon a "matter of public concern" outweighs the competing employer's interests in promoting the efficiency of the public services it discharges. *Pickering v. Board of Education*, *supra*; *Price v. Brittain*, *supra*; *Thompson v. City of Starkville, Mississippi*, *supra*.

If both criteria are satisfied, the employee must further prove that the "protected speech" was the motivating factor behind her termination. The "speech" will not be "constitutionally protected" if there is a failure in any one of the foregoing tests. *Mt. Healthy School District v. Doyle*, *supra*; *Price v. Brittain*, *supra*. If the complainant-employee carries this burden of persuasion, then the employer may nevertheless prevail if it is shown that the employee would have been dismissed even in the absence of the protected conduct. *Mt. Healthy City School District v. Doyle*, *supra*, at 576; *Price v. Brittain*, *supra*, at 257.

In this case, the courts below concluded that the plaintiff failed to prove that her speech merited constitutional protection. R. 5-6, Vol. 4; Pages A11 - A16 of the Appendix to petitioner's writ application; R. 112-113, Vol. 1. Under the facts of this action, as reflected by the entirety of the record, defendants contend that the courts below were correct in that the complainant failed to prove that her speech was a matter of public concern and/or that the interests of the City of Breaux Bridge, through its police department, were outweighed by her right to comment upon the incident involving Roger Istre. Each element of plaintiff's claims to the contrary shall be hereinafter reviewed in order to depict the validity of defendants' contentions.

A. The actions of Pauline Menard did not address a matter of public concern.

The threshold question before the Court is whether the plaintiff's speech activities deserve First Amendment protection

because they addressed a "matter of public concern". As previously noted, this exploration must be conducted with due regard to the content, form and context of the complainant's activities as revealed by the entire record. *Connick v. Myers*, 103 S. Ct. at 1690; *Thompson v. City of Starkville, Mississippi, supra*, at 461. Initially, therefore, the speech conduct of the plaintiff which led to her dismissal must be closely analyzed.

Throughout her argument expressed in the petition for certiorari, the plaintiff, either expressly or inferentially, repeatedly and incorrectly argues that her dismissal was precipitated by the fact that she informed the *District Attorney's Office of the alleged misconduct of Roger Istre. See* pages 7, 8, 27, 40 and 42 of the Petition for Writ of Certiorari. This is incorrect and inaccurate. Chief George Menard recommended the plaintiff's termination because: (1) She did not follow a chain of command in reporting the suspected activities of Istre; (2) She failed to notify proper legal authorities of the suspected criminal activities; (3) She discussed sensitive police information with persons who were not law enforcement officials; and (4) She was on probation for prior misconduct.

See Exhibits D-1 and D-2, R. 23, Vol. 3; R. 24, Vol. 3; Appendixes A and B; Tr. 17, Vol. 3; Tr. 22-24, Vol. 3. The City Council of Breaux Bridge, through its individual councilmen, acted affirmatively upon Chief Menard's recommendation once it satisfied itself that there were valid bases for the recommendation of dismissal. Tr. 83-84, Vol. 4; Tr. 97-101, Vol. 4; Tr. 58, Vol. 4; Tr. 70-71, Vol. 4; Tr. 93-94, Vol. 4. *This was an express Finding of Fact by the trial court. See* R. 111, Vol. 1; Pages A11-A16 of Appendix to plaintiff's Petition for Writ of Certiorari. In fact, the trial court never found that plaintiff's dismissal was the product of any information presented to the District Attorney's Office.

Plaintiff's assertion that she was dismissed because she reported the activities of Istre to the District Attorney's Office is

further shown by the record to be fallacious by the following. First, as established in the "Statement of the Case", Pauline Menard never reported the incident to the District Attorney's Office. Secondly, and more importantly, the fact that the District Attorney was advised of Istre's misconduct was never a reason relied upon by any of the defendants in recommending and/or voting to dismiss the plaintiff, as noted in the foregoing paragraph. Each of the councilmen denied the allegation when examined on that particular point. As a matter of fact, one councilman, Vernon Blanchard, testified that when he voted to accept the recommendation of Chief Menard, he was not even aware that the District Attorney had been advised of the Istre matter. Tr. 67, Vol. 4.

Defendants do not dispute that the *content* of the plaintiff's speech activities is worthy. However, the *form and context* in which her statements were uttered clearly do not satisfy the necessary standards so as to qualify as a "matter of public concern". In particular, one must not lose sight of the fact that at least two (2) individuals were informed by the complainant of the misconduct of Istre *before* any law enforcement officials were contacted by either the plaintiff or anyone acting on her behalf. Further, a third person, Janet Thibeaux, was advised of the activities of Istre. While complainant attempted to argue that the latter was informed because she was a Sheriff's Deputy, the testimony does not support this allegation. Tr. 102-103, Vol. 3. For example, the plaintiff and her husband commenced an independent investigation in order to determine the identities of the juveniles who may have been involved after Thibeaux was informed. Tr. 38, Vol. 4; Tr. 30, Vol. 4; Tr. 97-100, Vol. 3.

The complainant attempts to excuse her conduct because she was fearful of retribution, she had no idea of who within the Breaux Bridge Police Department was involved, and she felt that if Chief Menard was advised, he would not take appropriate action. These

"excuses" are inconsistent, without adequate support from the record and, even if valid, do not justify her relaying sensitive police information to citizens. The plaintiff, who had vast experience in law enforcement, and who admitted that she knew countless police officers (from state policemen to Sheriff Charles A. Fuselier himself), failed to advise anyone except private citizens of her suspicions concerning Roger Istre. See Tr. 108-110, Vol. 3.

The plaintiff was acutely aware that Officer Howard Devillier and Sgt. Ezebe Chevalier (her immediate superior), as well as a city councilman, were investigating the discovery of the Istre photographs. Tr. 35, Vol. 4. Even though she contends that she did not know which officers may or may not have been involved with Istre in the suspected illegal activities, on cross-examination, the complainant nevertheless admitted that she had no reason to suspect any police officers except Roger Istre; in fact, she could articulate no specific reason she suspected or distrusted any other fellow officer. Tr. 108-110, Vol. 3. As to her supposed fear of retribution, neither she nor her husband ever related such to Steve Champagne, the investigator with the District Attorney's Office. Tr. 40, Vol. 3.

The plaintiff has maintained in the course of this litigation that she was unaware of which desk contained the photographs in question - Istre's or Assistant Chief Thibodeaux's. A close scrutiny of the record will demonstrate that, at least as early as the morning after the discovery of the photographs, the plaintiff's husband knew that the pictures had been found in Istre's desk. Tr. 25, Vol. 4. Therefore, it is difficult to surmise that the complainant was unaware of this fact. Tr. 81, Vol. 3. Additionally, the information which was initially given to Steve Champagne of the District Attorney's Office was that Istre was the one involved in the misconduct. Tr. 34, Vol. 3.

The complainant further argues that she felt that Chief Menard

would have taken no action against Roger Istre if she had in fact advised him of the existence of the pictures. To support this position, the plaintiff contends in vain that Chief Menard had not properly handled incidents of misconduct in the past. Tr. 25, Vol.4; Tr. 83, Vol.3. Nonetheless, no such evidence was ever presented except vague testimony from her husband about an incident between Istre and an employee which occurred several years in the past. Tr. 25, Vol. 4. The nature of the event was characterized by Istre as "horsing around". No evidence to the contrary was adduced except the vague testimony of the complainant's husband. Tr. 32, Vol. 3. The trial court found that there was no evidence to support any belief that Chief Menard was involved and/or would not have acted properly upon receipt of information regarding Istre's misconduct. *See* Oral Reasons for Judgment, page A-4 of petitioner's writ application; page A-12 of writ application — trial court's Findings of Fact and Conclusions of Law, Number IV.

Defendants submit that the record of this case, viewed in its totality, does not sanctify the speech activities of Pauline Menard, particularly with reference to her sharing sensitive police information with private citizens. The Court is again reminded that her dismissal was, primarily, the product of her advice to private citizens and *her* failure to notify *any* law enforcement authorities of the existence of the obsene photographs. Her termination was not, as plaintiff incorrectly argues, the result of reporting the Istre matter to the District Attorney's Office. Hence, although the content of the complainant's speech involved a matter of import, when judged in light of its *form and context,* it does not rise to the level of constitutional proportions, as the courts below correctly held.

B. The plaintiff's interests, if any, do not outweigh those of the defendants in their position as a public employer.

The Court is called upon to balance the competing interests of

the plaintiff and defendants only if it concludes that the complainant's speech activities addressed a matter of public concern. Although defendants contend that the plaintiff will be unable to satisfy this requirement, out of an abundance of caution, the following is submitted for the Court's edification.

The mechanics of the process of balancing the interests of a public employee and a public employer in the context of the First Amendment were initially discussed in detail in *Pickering v. Board of Education, supra.* In examining the right of the plaintiff teacher to express his criticism of the School Board's handling of certain matters, the Court in that case studied the teacher's comments against the School Board's desire to suppress same in relation to its day-to-day operations. In concluding that the teacher's exercise of his freedom of speech would not furnish a basis for his dismissal, the Court found that there is, "no question maintaining either discipline by immediate superiors or harmony among co-workers" and further, that the employment relationships, "are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary for their proper function." *Pickering, supra,* at 570. The court also noted that the case did not present a situation in which the statements of the teacher were "so closely related to the day-to-day operations of the schools that any harmful impact on the public will be difficult to counter because of the teacher's presumed greater access to the real facts." 391 U.S. at 572.

This Honorable Court followed the reasoning of the *Pickering* case in the decision of *Connick v. Myers, supra.* In that action, the District Attorney for the Parish of Orleans, Louisiana, decided to transfer the plaintiff, an Assistant District Attorney, to a different division within his department. The assistant strongly opposed the transfer and expressed her view to several of her supervisors, including Connick, the District Attorney. Shortly thereafter, she prepared a questionnaire and distributed it to other Assistant

District Attorneys in the Connick office. The questionnaire addressed several matters including whether various employees felt pressured to work in political campaigns. When he learned of this questionnaire, Connick informed his assistant that she was being terminated for refusal to accept the transfer, and that her distribution of the questionnaire was considered an act of insubordination. The assistant then filed a Section 1983 action alleging that her dismissal constituted an infringement upon her constitutionally protected right of freedom of speech.

The Court concluded that the behavior of the employee, the Assistant District Attorney, was calculated to lead to the disruption of the District Attorney's Office, thus undermining the authority of the employer and destroying the close working relationships which are essential to the office. Therefore, in refusing to find that her dismissal was offensive to the First Amendment, the Court stated:

> The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment.

Thus, as noted by both the *Pickering* and *Connick* cases, the First Amendment rights of the public employee must be balanced against the competing interests of the employer as determined by matters such as: the necessity for close working relationships; the need for trust, loyalty and confidence between employer and employee; the sensitivity of the context of the alleged protected speech; the need to maintain confidentiality within the employer's business realm; the manner, time and place of the speech; the context in which the speech arose; and, the effect the speech may have upon the public employee to discharge the duties of his position.

The jurisprudence of this country has, time and again, recognized that a police department has a significant governmental interest in regulating the speech activities of its officers in order to instill public confidence in the law enforcement institution and to promote trust and confidence within the department itself. *Hughes v. Whitmer*, 714 F.2d 1407 (8th Cir. 1983). Likewise, a police department has a significant governmental interest in developing efficiency, loyalty, discipline, esprit de corps, and uniformity in its operations. *Kelley v. Johnson*, 425 U.S. 238, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976); *Hughes v. Whitmer, supra*; *Brockell v. Norton*, 732 F.2d 664 (8th Cir. 1984). Therefore, it is not unreasonable to expect police officers to adhere to a policy or procedure which creates a chain of command and to discourage the unrestrained dissemination of sensitive police data.

On page 24 of her writ application, the plaintiff states that, "The defendants did not introduce any evidence of disruption of the general performance and operation of the police department." However, each police officer who testified in this action verified that it is essential to the operation of a police department that there be a high degree of trust and loyalty among the officers and their superiors. Moreover, confidentiality is a necessary ingredient for a stable, efficient police department. Tr. 42-43, Vol. 3 (Captain Steve Champagne); Tr. 71-73, Vol. 3 (Sgt. Ezebe Chevalier); Tr. 27-28, Vol. 3 (Chief George Menard). Even the sharing of sensitive information with one's spouse is considered counterproductive to the objectives of a police department. Tr. 72, Vol. 3. Additionally, proper police practices demand, at a minimum, that an officer's superiors be advised of any misconduct whether of a fellow officer or a private individual. Tr. 58-59, Vol. 3.

As has been previously established in this disquisition, the complainant had no reason to suspect that anyone other than Roger Istre was involved in possible misconduct. Although she had

known Chief George Menard for several years, and despite the fact that she was close friends with her immediate supervisor, Sgt. Ezebe Chevalier (Tr. 73, Vol. 3), the plaintiff elected to share confidential, sensitive information with no law enforcement officer within the Breaux Bridge Police Department, or with any other agency for that matter. Her lack of trust and confidence in, and loyalty to, her superiors and fellow officers is without question. Against this backdrop, therefore, defendants submit that the complainant could not, as a consequence of her "speech activities", continue to properly function as a police officer within the Breaux Bridge Police Department, particularly in view of its small size.

On pages 27-28 of plaintiff's petition for certiorari, she further contends that her actions were not of the type that would adversely affect the functions of the Breaux Bridge Police Department.[6] This argument is clearly without merit in that not only did her conduct (the dissemination of sensitive police data) create a dangerous situation which could have impaired the ongoing investigation of Officer Devillier and Sgt. Chevalier, but it also undermined the trust and confidence of other Breaux Bridge police officers in her with regard to future investigations. Simply because the Sheriff's investigation, initiated at the request of the District Attorney's Office, led to the arrest of Istre, complainant requests that this Honorable Court ignore the potentially disruptive and dangerous impact of her activities. Although no direct and immediate harm resulted from the plaintiff's conduct, the defendants' concerns about Pauline Menard's future activities and the negative impact

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6. It appears that the plaintiff's arguments in this respect are premised upon the assumption that her "speech conduct" which led to her dismissal was the reporting of the misconduct of Istre to the District Attorney's Office. As has been previously noted, the termination of Menard from her employment was not related to her speech activities vis-a-vis the District Attorney; rather, it was the product of her dissemination of sensitive police data to private citizens, as opposed to any of her superiors, particularly while she was on probationary status. In any regard, the conduct of the plaintiff demonstrated a total lack of trust, confidence and loyalty in her fellow officers, as previously established.

thereof are well grounded.

Accordingly, when the balancing test established by *Pickering v. Board of Education*, *supra*, is employed in the case before this Honorable Court, it will be seen that the plaintiff's "speech activities" do not rise to the level of constitutional protection.

C. The Bases of the Plaintiff's Dismissal

The consideration of whether the speech activities of Pauline Menard were the reason for her dismissal is unnecessary until and unless this Honorable Court has determined that her conduct is in fact protected under the First Amendment. Defendants maintain that an adjudication of this case will not entail an examination of the bases for the plaintiff's termination since her speech conduct is not constitutionally protected, as the courts below ruled. Nonetheless, the following is submitted in response to the complainant's arguments on this particular point.

Plaintiff incorrectly contends in her application for certiorari that it was the reporting of the Istre matter *to the District Attorney* which precipitated her termination. As has been established time and again in this disquisition, the complainant's dismissal centered upon *her failure* to report the matter to any police official, including her superior(s), as well as her actions in advising private citizens with no association to law enforcement of the possible criminal activities of Istre. Also, plaintiff ignores the fact that she was on departmental probation because of previous misconduct concerning her dissemination of police communications.

As support for her claims that her dismissal was a consequence of her husband's advice to the District Attorney, the complainant argues that none of the other officers who failed to report the Istre matter to their superiors were fired. The plaintiff fails to recognize, however, that of all of the officers who neglected to report the incident, she was the only one on departmental

probation. Moreover, unlike the complainant, the only "private citizen" the other officers notified was Wilbert Alexander, a city councilman, who, as part of the governing authority of the City of Breaux Bridge, is the employer of all police officers. *See* La.R.S. 33:423. Additionally, the other officers were in fact suspended, without pay; and, Officer Devillier and Sgt. Chevalier had taken affirmative, official action to investigate the alleged criminal conduct of Istre.

On pages 29-33 of petitioner's application for certiorari, complainant alludes to comments made in a report prepared by City Attorney, Michael A. Harris (Exhibit P-10, R. 76, Vol. 4; Appendix C to this brief), to the effect that allegations had recently surfaced regarding the misconduct of other officers involving juveniles. The plaintiff argues, therefore, that the Breaux Bridge Police Department was "one of corrupt and rampant policy [sic] impropriety". Thus, no close working relationship could or would be adversely affected by disclosure of that misconduct by plaintiff.[7]

It must be noted that at no time did complainant or her husband ever allude to the report of Harris, or any of the allegations contained therein. Clearly, this "report" does not establish any basis for remarks that the police department was "corrupt" and that "rampant" police impropriety prevailed; and, the contents of the report cannot be said to have been the reason for the plaintiff's mistrust. Moreover, the statements in the report are mere allegations with no supporting evidence. Accordingly, no action which plaintiff adopted, or failed to adopt, had any relationship to

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7. Apparently, the plaintiff also relies upon the report of Harris as proof that she could trust no one within the department; hence, she contends she was justified in her failure to notify her superiors and other fellow law enforcement officials. However, nowhere in her testimony does the plaintiff ever allude to having been privy to any of the statements, allegations or information contained in the report of Harris.

that report. Out of fairness and a sense of thoroughness, as previously indicated, Harris' report is attached as Appendix C to this brief. As can be seen from a mere perusal thereof, the bulk of that report is hearsay, innuendo and concludes with voluminous recommendations by Harris.

In conclusion, the entirety of the record in this case discloses that the only bases for plaintiff's dismissal are those identified in Exhibit D-1, a copy of which is found in Appendix A. The alleged "speech conduct" of the complainant, under the facts of this action, simply does not warrant any constitutional protection whatsoever.

II.

THE DISTRICT COURT DID NOT ERR IN FINDING THAT THE DEFENDANTS' ACTIONS IN DISMISSING PAULINE MENARD WERE NOT IN BAD FAITH.

The plaintiff correctly acknowledges that the trial court found that the defendants in this case acted in good faith. Tr. 5, Vol. 4; R. 112, Vol. 1; Pages 4-10 of Appendix to petitioner's writ application. Thus, this finding of "good faith" is tantamount to a recognition of the valid defense of qualified immunity. *Busby v. City of Orlando*, 931 F.2d 764 (11th Cir. 1991). The application of the defense of qualified immunity was recently and accurately set forth in *Thompson v. City of Starkville, Mississippi, supra*, at 468-469, wherein the following guidance was given:

> "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established' at the time it was taken. . . ."

> *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 819, 102 S.Ct. 2727, 2738-39, 73 L.Ed.2d 396 (1982). Thus, "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); *see also Anderson*, 483 U.S. at 640, 107 S.Ct. at 3039.

Defendants admit that a public employee's right to free speech was well established in our jurisprudence on the date of the plaintiff's dismissal. However, the case-by-case analysis required by the jurisprudence in First Amendment cases makes it difficult for government officials to, ipso facto, ascertain whether under any particular factual circumstances an employee's speech conduct merits constitutional protections. This was recognized by the court in *Noyola v. Texas Department of Human Resources*, 846 F.2d 1021 (5th Cir. 1988) where the court observed:

> One consequence of case-by-case balancing is its implication for the qualified immunity of public officials whose actions are alleged to have violated an employee's first amendment rights. There will rarely be a basis for *a priori* judgment that the termination or discipline of a public employee violated 'clearly established' constitutional rights." (citations omitted)

See also, Thompson v. City of Starkville, Mississippi, supra, at 469-470.

A detailed recitation of the factual perimeters of this case before this Honorable Court would be superfluous. However, as has been established previously, the defendants herein conferred with their City Attorney, Michael A. Harris, and were assured that there was a valid basis for the dismissal of the plaintiff. Furthermore, the advice of their counsel was the product of a thorough investigation of the situation before it. Tr. 83, Vol. 4; Tr. 71, Vol. 4.

Therefore, the conduct of Pauline Menard, when viewed in light of the peculiar facts of this case, does not portray any "clearly established" rights under the First Amendment. Likewise, the actions of the defendants were obviously, and without question, objectively reasonable. Hence, the defendants before this Honorable Court, under any circumstances, should be shielded from liability under the defense of qualified immunity as recognized and applied by the jurisprudence of this country.

CONCLUSION

Defendants contend that under the facts of the case at bar, the speech activities of Pauline Menard do not merit immunity under the First Amendment for several reasons. First, when viewed in light of the entirety of the record established at trial, the plaintiff's speech does not satisfy constitutional standards because of its form and context. Specifically, the complainant did not have sufficient justification for disclosing confidential, sensitive police data to her husband and other private citizens, none of whom enjoyed any relationship to law enforcement. Additionally, inherent in her duties as a police official was the mandate that she immediately advise her superior, and/or any other law enforcement official, of the alleged misconduct of Istre.

Moreover, the plaintiff's conduct demonstrates that, without justification or any articulative reason, she had little or no trust in either her superiors or fellow officers within the Breaux Bridge Police Department. The unauthorized dissemination of sensitive, confidential police information, and her complicity in an "investigation" concerning the alleged criminal conduct of Istre, undermine the very bases upon which police departments must operate. Without question, Pauline Menard's "speech activities" renders it impossible for her to serve as an officer of the law with the City of Breaux Bridge. Any rights she may enjoy under the First Amendment are pale by comparison to the interests and objectives of the Breaux Bridge Police Department to effectively discharge its duties.

Essentially, the dismissal of the complainant was as much the result of her failure to speak as it was the exercise of her "right" of speech; i.e., her failure to report suspected criminal conduct to appropriate authorities. Defendants contend that it is clear and unequivocal that the actions of PAULINE MENARD erode the competence, respect and professionalism which must prevail within a police department. The best interests of the public demanded her dismissal.

Furthermore, the actions of the defendants with regard to the plaintiff's termination were, and are, objectively reasonable and in good faith. Moreover, the "speech conduct" of the complainant did not introduce "clearly established" rights under the First Amendment when viewed in light of the *entire* record of this case. Likewise, the defendants relied upon independent investigations by their City Attorney, as well as his assurances that a factual basis existed for affirmatively acting upon the recommendation of Chief George Menard.

In consideration of all of the foregoing, it is defendants' position that the judgments of the courts below are correct in all

respects. Therefore, this Honorable Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

CHESTER R. CEDARS
Attorney at Law
Post Office Box 845
Breaux Bridge, LA 70517
318/332-4586
Bar Roll Number: 3956
Counsel for Respondents, City of Breaux Bridge, Mayor Louis Kern, Chief George Menard, Councilman Wilbert Alexander, Councilman Anthony Herbert, Councilman Vernon Blanchard, Councilman Neil Melancon, and Councilman James Herbert

APPENDIX A — LETTER DATED FEBRUARY 20, 1989

CITY OF BREAUX BRIDGE
POLICE DEPARTMENT
221 MAIN ST.
BREAUX BRIDGE, LOUISIANA 70517

PHONE 332-2186

February 20, 1989

GEORGE MENARD
CHIEF

Officer Pauline Menard
Breaux Bridge, Louisiana

Re: Suspension From Duties

Dear Pauline:

It is my duty to notify you that, effective immediately, you are suspended from your police duties for an indefinite period of time. I am recommending to the Mayor and City Council that this suspension be without pay. I am further recommending that because your conduct is substantially similar to conduct for which you were previously suspended, your employment with the Breaux Bridge Police Department be terminated.

This action results from your failure to advise your superiors, specifically myself and Assistant Chief Thibodeaux of evidence you were aware of pertaining to the possible misconduct of a fellow officer. Further, you failed to notify the proper legal authorities, in violation of your sword duty to so act. In addition,

you provided this information to a civilian outside the police department. These actions are contrary to department policy, and adversely reflects upon your ability to perform duties as a police officer.

This suspension will be effective immediately.

Sincerely,

George Menard
Chief of Police

cc: Mayor Louis Kern

APPENDIX B — LETTER DATED OCTOBER 25, 1988

CITY OF BREAUX BRIDGE
POLICE DEPARTMENT
101 Berard St.
BREAUX BRIDGE, LOUISIANA 70517
PHONE 332-2186

October 25, 1988

GEORGE MENARD
CHIEF

Mrs. Pauline Menard
Agnes Drive
Breaux Bridge, Louisiana 70517

In Re: Suspension from Duties

Dear Pauline:

As a result of a number of incidents which have occurred within the past several days, I am, notifying you that you are suspended for a period of two weeks.

I have recommended to the Mayor and the City Council that you be suspended without pay for that period of time and also notify you that you are placed on Departmental probation for a period of eighteen months.

This action results from several incidents which go directly to your ability to perform the duties required of you as a Police Dispatcher for the City of Breaux Bridge Police Department.

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The reason this action is taken is that you have refused to deal with Mr. Ezebe Chevalier, a superior officer, and have refused and/or failed to comply with direct orders from Mr. Chevalier, and have further failed to relay vital information to him as a result of complaints made to the Breaux Bridge Police Department.

It has come to my attention that you failed to notify officers who should be aware of calls for backup situations which may imperil their lives and have failed and refused to answer the radio and telephone because you did not wish to speak to personnel in question.

You have also tied up the telephone lines for personal phone calls for a substantial period of time imperiling the citizens of Breaux Bridge in not being able to reach the Police Station.

There have also been encounters of physical violence between your husband and yourself while you were on duty at the Police Station, which demeans the office which you hold and causes the Police Department to be held in disrespect.

As a result of the accumulation of these actions, we are advising you that you are suspended beginning Wednesday November 26, 1988 for a period of two weeks and that it is our recommendation that it be without pay.

If the problems continue to occur, we will have no choice but to recommend firing.

Appendix B

Sincerely,

George Menard
Chief of Police

GM
cc: Honorable Mayor Louis Kern

APPENDIX C — NOTES OF ATTORNEY

February 18, 1989:

At approximately 10:00 a.m., I was contacted regarding the arrest of Roger Istre on various charges of misconduct with juveniles, the previous day. I immediately met with Charlie at the P.D. The Chief was present. I was told that on the previous Tuesday night, Howard & Dave broke into Roger's desk to find pictures of juveniles that Roger had taken. Howard, using the P.D.'s camera, took pictures of the pictures. This photo was supplied to Ezebe, who attempted to contact Col Alexander. Apparently, Col was not approached until Thursday night.

Before going to Ezebe, Howard showed the picture to Pauline. Pauline has stated that she was told, by Howard, not to say anything, that he was going to use the picture to make politics at the next election. Pauline advised her husband, Eldridge, about the pictures, so that he could use the info in an effort to cut a deal with the D.A. regarding his own criminal charges. This is how the Sheriff got involved.

Col contacted one of the juveniles, to whom he is related, and was advised that the picture and incidents are correct. He then got a police officer to take a statement, and assumed the matter would be handled properly.

From another source in the S.O., I learned that Goodie and Derouselle were directly involved in one incident where a juvenile was held down and partially stripped while a picture was taken. I understood criminal charges were pending.

I have also been advised that Ezebe and Howard are sexually involved with a minor. There is no confirmation as the

Appendix C

S.O. states that the girl denies the claim. Apparently, there are no independent witnesses. We are also advised that several juveniles claim to have been picked up, and rode around with police officers until 2:30 or 3:00 in the morning.

I returned home and spoke with Uncle Jim, who had heard the Mayor was trying to contact me. I called the Mayor and tentatively set up a meeting with him and various councilmen for Sunday.

February 19, 1989:

I met with the Mayor and Uncle Jim where we discussed the problem and potential liability, which is substantial. The Mayor advised me of a meeting the following morning.

February 20, 1989:

The Mayor, Chief, Charlie and I met with the Sheriff and Butch Dupuis. The above facts were confirmed. I was provided copies of the pictures and the names of the children. A discussion concerning the police officer was conducted wherein the Chief took the following actions:

Suspended indefinitely because of the pending criminal charges:

Melvin Goodie
Anthony Derouselle.

Suspended for two weeks, because of knowledge of illegal

Appendix C

actions, but failed to advised Chief or other law enforcement authorities:

Ezebe Chevalier
Howard Devillier — ALL WITHOUT PAY
Dave Clark (1 week)

Suspended indefinitely with a reccomendatin of discharge, because of previous suspension and probation; for similar offense:

Pauline Menard.

I wrote the letters informing the officers

These actions were taken upon the recommendation of the Sheriff, the Mayor and myself, based upon information in our possession.

The Sheriff agreed to cooperate fully to provide the City with information and furnish reserve deputies.

Since the suspension, a story has arisen where Ezebe, Howard were to meet with the Chief at 4:00 p.m on the Friday of the arrest. (Note that Roger was arrested at 3:00 p.m). However, the S.O. has learned that Ezebe left town at 2:00 p.m to go to the races and did not return until after 11:00 p.m. In addition, both officers picked up their checks that day without mentioning anything to the Chief.

There have been numerous conferences with S.O. detectives regarding the various charges. There has been little

change, other than Melvin confessing.

On February 27, 1989, the Mayor, Chief Col Alexander and myself met with the Sheriff and Phil Haney. Possible settlement was discussed. Col was to set up appointments for me to get an idea what it would take to settle. Meetings were set up for Tuesday at 10:00 am and 2:00 pm., and on Wednesday. So far, the first meetings were no show.

Also, I was advised today that Kyle Gideon had filed suit on behalf of Dirk Angelle. It is a 1983 action in Federal Court and makes defendants Roger, George Menard, and the City. I will be served shortly. This matter will be defeused.

Regarding the various juveniles, only one of the incidents is really troublesome, that of the child held down and photographed. The rest appear to be willing participants. There is a claim of a homosexual relationship which may also be a problem; however, the D.A. may not even accept charges here. In any event, the potential exposure to the City may exceed the ability to pay. Appropriate steps may have to be taken to seek protection.

I have also learned that, at least on one occasion, Roger, acting alone, forced two females to disrobe, while they were detained for an offense which would not require search.

Based upon the foregoing, I would make the following recommendations:

The Chief's action be approved with regard to Howard, Ezebe and Dave, with the additional consideration that they be placed on lengthy probation.

Appendix C

Affirmation as to Pauline Menard.

Discharge Melvin Goodie.

Anthony Derouselle be maintained on indefinite suspension without pay, until the Sheriff's investigation is complete, with an evaluation at the conclusion as to retain or not. This is an alternative to discharge.

I also recommend that the following procedures be adopted:

a) The hiring procedure be altered to include background & educational checks. There be a mandatory interview with the members of the council. Psychological evaluation be obtained if financially possible. Tests.

b) There be regular meetings, attended by the Mayor, and/or council, wherein complaints could be discussed regarding performance.

c) Strict security measures be taken to prevent unauthorized persons from entering the P.D. office.

d) Prohibit passengers, other than prisoners, in police vehicles.

e) A policy should be established regarding the chain of command, and information outside the police department.

f) Ask the Sheriff if each officer could participate in a continued training program.

Appendix C

g) Juveniles should not be questioned or used as informants without the presence of another officer or the parents, preferably both. Any such contact should be in the police station.

h) Any time female prisoners are present, a female officer should also be and conduct any searches.

While these suggestions do little to change the present problem, I feel this will assist in preventing problems in the future, especially in light of today's environment where everyone is anxious to sue.

I would also suggest that litigation is pending regarding this matter. Therefore, any contact with the victims or their families should be avoided. Statements to the press should also be avoided. Everyone should be careful of what is said regarding these matters because of the possibility of stating something not generally known. An unfortunate slip of the tongue may adversely affect pending litigation. I am not suggesting a coverup, and any appearance of such is to be avoided. I feel that everything regarding this unfortunate incident should be handled in the context of pending litigation.

Very little information has been provided to the media. Other than some clarification, very little should be. I would suggest that the emotions should die down.